UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

UNITED STATES OF AMERICA,
ex. rel. MITCHELL D. MONSOUR and
WALTON STEPHEN VAUGHAN (Relators) **PLAINTIFFS**

V. **Civil Action No. 1:16cv38HSO-JCG**

PERFORMANCE ACCOUNTS RECEIVABLE, LLC, et al. **DEFENDANTS**

PLAINTIFFS/RELATORS' RESPONSE AND MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS (AND FOR SUMMARY JUDGMENT) BY DEFENDANTS DEARDORFF AND STEPPING STONES HEALTHCARE

I. The FCA Complaint Adequately Alleges with Particularity that the Stepping Stone Defendants Actively Caused Violations of (A) the Anti-Kickback Act, (B) Medicare Cost Report Statutes, and (C) the False Claims Act.

Defendants Clay Deardorff and his Stepping Stones Healthcare, LLC (hereafter jointly referred to as "Stepping Stones"), ask the Court to depart entirely from well-established Fifth Circuit precedents adjudicating claims under the False Claims Act, 31 U.S.C. §§ 3729-30 ("FCA"), when they insist that they cannot be liable under FCA for the reasons that they did not individually and directly (1) submit hospitals' claims to Medicare, or (2) sign hospitals' Medicare enrollment applications, or (3) prepare hospitals' cost reports (so as to include payments the hospitals made to Stepping Stones), or (4) receive payments directly from Medicare. Physician defendants in *U. S. ex rel.*

Riley v. St. Luke's Episcopal Hospital, 355 F.3d 370 (5th Cir. 2004), similarly argued that it was hospitals, and not physicians, who had presented and been paid by federal insurers for procedures in which the physicians had directly participated, and thus that the physicians could not be proper FCA defendants. *Id.* at 377-78. All such arguments were rejected by the Fifth Circuit, ruling that the "FCA applies to anyone who 'knowingly assist(s) in causing' the government to pay claims grounded in fraud, 'without regard to whether that person ha(s) direct contractual relations with the government.'" *Ibid.*, quoting *Peterson v. Weinberger*, 508 F.2d 45, 52-53 (5th Cir. 1975).[1]

Stepping Stones also implicitly asks the Court to disregard the text and purpose of the Anti-Kickback Act, 42 U.S.C. § 1320a-7b(b)("AKA"). Through that Act, Congress (in admittedly sweeping terms) firmly decided that, while the United States was willing to pay to actual providers of health care the true value of providing such care, it was not willing to also pay - however indirectly - additional amounts for the "costs" of having

---

[1]The Fifth Circuit in *Riley* added, quoting *United Sates v. Mackby*, 261 F.3d 821, 827 (9th Cir. 2001), that "a person need not be the one who actually submitted the claim forms in order to liable" under the FCA. *Riley, supra*, at 378. The Fifth Circuit therefore held that, in alleging that the physician defendants and hospital defendants had "assisted one another and cooperated in a scheme or pattern" resulting in billing of legally-false claims, the *qui tam* complaint in that case had sufficiently alleged FCA liability on the part of all such defendants. *Ibid.* Indeed, under the FCA's Subsection 3729(a)(1)(A), a person can be liable not only if he or she "knowingly presents," but also if he or she by her conduct "*causes* to be presented," a legally or factually false claim for payment (Count 1 herein). Likewise, under Subsection 3729(a)(1)(B), a person can also be liable if he or she "knowingly makes, uses, or *causes to be made or used, a false record* or statement *material* to a false or fraudulent claim" (Count 2 herein). Finally, under the FCA's Subsection 3729(a)(1)(C), a person can also be liable for participating in an agreement or *conspiracy to cause* any such claim or statement to be made (Count 3 herein)(emphasis added).

paid arrangers, marketers or referrors of additional health care business. *See, e.g., United States v. Patel*, 778 F.3d 607, 612 & 618 (7th Cir. 2015)(primary congressional purpose of AKA is to contain the "cost of care" of Medicare and Medicaid patients).[2] In the AKA text most relevant to Stepping Stones' conduct, the statute forbids any person from receiving any monetary value (whether it takes the form of a "kickback" or not) in exchange for any activity "arranging for *or* recommending" any service "for which payment may be made in whole or in part under a Federal health care." *Ibid.* As alleged in the Complaint, Stepping Stones did just that when it agreed with both Franklin County Memorial Hospital *and* Pearl River County Hospital to "develop" (i.e., arrange for) the "operation by the Hospitals of geriatric intensive outpatient psychological therapy programs (called "IOPs")," with an express purpose of substantially increasing the "costs" - "and thus Medicare revenues" - from the IOP operations, with Stepping Stones to be paid by the hospitals *not* according to the true costs or value of any health care actually delivered to patients, but instead according strictly to how much increased "gross charges" Stepping Stones could arrange for its hospital clients to charge to Medicare for

[2]The Seventh Circuit in *Patel* emphasized, in support of a very broad reading of the term "referral" within the AKA, that the AKA "was enacted to 'protect the Medicare and Medicaid programs from increased costs and abusive practices resulting from provider decisions that are based on self-interest rather than cost, quality of care or necessity of services,'" quoting "Guidance on the Federal Anti-Kickback Law" by U.S. Dept. of Health and Human Services, http://bphc.hrsa.gov/policiesregulations/policies/pal199510.html (last visited Feb. 2, 2015).

resulting IOP operations.[3] The higher-contingency-fees-for-more-patients-arranged-for exchange between Stepping Stones and the two hospitals was obvious, as the Complaint describes in detail: For its development of, arrangements for, and referrals of additional IOP patients and business, Stepping Stones received fully forty percent (40%) of the hospital's "gross charges" from resulting IOP operations - if, but only if, such gross charges were "in excess of $600,000."[4] If "gross charges" did not hit that $600,000 marketing target, but reached "in excess of $250,000," Stepping Stones received thirty-two percent (32%) of the gross charges to Medicare. (*Ibid.*) As alleged in detail in the Complaint, all such extraordinary payments were exchanged exclusively for bringing the hospitals more and more IOP business - not for performing health care services of any kind.[5] As alleged, such terms were entered between Stepping Stones and Pearl River County Hospital in April of 2011, and otherwise with Franklin County Memorial

---

[3]Complaint herein, at Page 19, Paragraphs 53 & 54. Stepping Stones, which did not provide even one patient with actual IOP services or other health care, was obviously being paid in exchange for arranging for and referring more IOP business to the hospitals - the very kinds of costs which Congress insists through the AKA that the United States is not willing to pay. *Id.* at Page 20, Paragraph 55: "(N)one of the agreements by Hospital Defendants with Deardorff or Stepping Stones were intended or designed to compensate either of them for the value of services directly related to or necessary for patient care. Indeed, Hospital Defendants' agreements with Stepping Stones obligated the medical staffs and employees of the Hospitals, and not employees of or providers to Stepping Stones, to be the exclusive providers of actual IOP services actually delivered to Medicare patients." *Ibid.*

[4]*Id.* at Page 19, Paragraph 54.

[5]*Id.* at Page 20, Paragraph 55.

Hospital.[6]

Stepping Stones admitted that it knew that all such fees paid to it by such "critical access" hospitals were going to be included on the hospitals' "cost-based" cost reports resulting in 101% reimbursements by Medicare.[7] Admitting that he had entered yet another agreement with the Pearl River County Hospital to "kick back" a "large donation for the planned new PRC Hospital Foundation" if (but only if) the "IOP revenues" resulting from Stepping Stones' own IOP arrangements "reached a certain high amount" (as an obvious reward in exchange for the hospital having allowed Stepping Stones to profit hugely from the targeted high numbers of referrals), Defendant Deardorff "later attempted to justify such a kickback arrangement by assuring the successor hospital administrator, namely (Plaintiff) Relator Vaughn, that 'all (of) Stepping Stone's fees are cost-based,' and that 'the hospital receives 101% of these costs,'" which of course is true only of Medicare cost-based reimbursements (of which Deardorff was obviously well aware).[8] In practical effect, Stepping Stones asked its client hospital: "why should you care how much in volume-based fees you pay Stepping Stones when you and I both know that all such amounts add to the hospital's 'costs,' and thus the amounts of its "cost-based" reimbursements of "101% of all such costs by Medicare?" Deardorff's statement

---

[6] *Id.* at Page 19, Paragraphs 53 & 54.

[7] *Id.* at Page 22, Paragraph 61.

[8] *Ibid.*

demonstrates not only that "costs" resulting from volume-based fees paid by the hospitals to Stepping Stones (in return for Stepping Stones' arrangements for additional IOP patients and business) would in fact be added to the hospitals' Medicare "cost" report (and thus Medicare reimbursement) amounts, *but also that Stepping Stones knew* of that fact and intended to have that effect on the hospitals' Medicare reimbursement.[9]

That may be the heart of the scheme entered by the Walters Defendants and Stepping Stones with their cost-based hospital clients. But it is also the heart of what Congress was trying through the AKA to forbid.

Stepping Stones further asks this Court in effect to disregard the very flexible approach which the Fifth Circuit has adopted for applying FRCP Rule 9(b) to FCA cases. That Rule itself requires of complaints involving allegations of "fraud" (including, admittedly, FCA complaints), that a plaintiff "state with particularity the circumstances constituting fraud." In the context of FCA complaints, "Rule 9(b) supplements but does not supplant Rule 8(a)'s notice pleading," and "does not 'reflect a subscription to fact pleading' and requires only 'simple, concise, and direct' allegations of the 'circumstances constituting fraud,' which after *Twombly* must make relief plausible, not merely

---

[9]Stepping Stones' cynical admissions about how its Critical Access Hospital clients would be reimbursed "101%" for whatever volume-based fees they paid Stepping Stones provides particularized evidence about Stepping Stones' relevant "state of mind," in that Deardorff and his company obviously knew that (a) they were *not* being paid for providing actual health care services, (b) they *were* being paid to arrange for more IOP business to be referred to and received by their hospital clients, (c) their fees would be treated as "costs" on the hospitals' Medicare cost reports, and (d) those purported "costs" would result in Medicare paying per-patient claims equal to "101%" of the amounts of such "costs." *Ibid.*

conceivable, when taken as true." *United States ex rel. Grubbs v. Kenneganti*, 565 F.3d 180, 185-86 (5th Cir. 2009), quoting in part *Williams v. WMX Techs., Inc.*, 112 F.3d 175, 178 (5th Cir. 1997).

The *Grubbs* decision remains the most definitive decision by the Fifth Circuit concerning the application of Rule 9(b) to FCA complaints. In it, the Court explained that the kind of particularity required by Rule 9(b) is "context-specific," and that "there is no single construction of Rule 9(b) that applies in all contexts." *Id.* at 188. "Depending on the claim, a plaintiff may sufficiently 'state with particularity the circumstances constituting fraud or mistake' without including all the details of any single court-articulated standard - it depends on the elements of the claim at hand." *Ibid.* While noting that particularity as to "time, place, contents, and identity" is routinely required of common law fraud allegations, the Fifth Circuit emphasized that the FCA "lacks the elements of reliance and damages" required of a common law fraud claim, such that an FCA complaint which lacks particulars as to contents or billings is not presumptively barred by Rule 9(b). *Id.* at 189. "(S)urely a procedural rule ought not be read to insist that a plaintiff plead the level of detail required to prevail at trial." *Ibid.* Any "'time, place, contents, and identify' standard is not a straitjacket for Rule 9(b)" in FCA cases, such that the "rule is context specific and flexible and must remain so to achieve the remedial purpose of the False Claims Act." *Id.* at 190.

Ultimately, an FCA complaint which "sets out the particular workings of a

scheme" of which relators became aware meets the requirement of Rule 9(b), if the fact of a later submission by others of legally false bills to Medicare or another federal agency is evidently "the logical conclusion of the particular allegations" in the FCA complaint. *Id.* at 192. Stepping Stones' express statements to Relator Vaughn prove that Stepping Stones *knew* that "costs" equal to "101%" of fees paid by to Stepping Stones by any Critical Access Hospital would be reimbursed by Medicare.

In particularized allegations presumed to be true for the present procedural purpose, the present FCA complaint sets out particular workings of a scheme in which Deardorff and Stepping Stones were among those who knew of and agreed to participate to their substantial financial benefit in what is described as "the Defendants' Cost Padding Scheme." In it, they like other Defendants "fraudulently exploited the cost-based system of Medicare reimbursement of (the Critical Access Hospitals which paid Stepping Stones in combination with other Defendants) millions of dollars in payments . . . for activities designed to pad and inflate costs, the amounts of which were falsely represented on the (relevant hospitals') cost reports to Medicare as directly related to (and as necessary to) patient health care (but the central purpose and effect of which was to enrich (parties including Stepping Stones))."[10]

Finally, Stepping Stones effectively urges the Court to disregard the legally-

---

[10]Even if Stepping Stones had demonstrated a failure of particularity within the meaning of Rule 9(b), any resulting dismissal would be required to be a dismissal *without* prejudice. *See, e.g., Guidry v. Bank of LaPlace*, 954 F.2d 278, 288 (5th Cir. 1992).

accepted scope of the law of conspiracy incorporated into the FCA when it provides, in Subsection 3729(A)(1)(C) thereof, for liability as to any person who "conspires" to commit a particular substantive FCA violation, including participation in an agreement in which *any* person "*causes* to be made or used a false record or statement *material* to a false or fraudulent claim" in substantive violation of Subsection 3729(A)(1)(B)(emphasis added). By agreeing to participate (to their own financial advantage) in the Defendants' "Cost Padding Scheme" of over-charges to hospitals whose "costs" they knew were paid by Medicare, Stepping Stones became liable under the law of conspiracy for the cost-padding conduct of all other parties to the same agreed scheme, even if Stepping Stones did not itself conduct or profit from cost-generating transactions carried out by others during the scheme. *See, e.g., United States v. Herlihy*, 1998 U.S.App. LEXIS 39863 *11-12 (5th Cir. 1998)(physician who knew of and implicitly joined scheme to defraud federal insurers was criminally liable for false claims even as to patients who the physician never knew of and never treated).

II. The Stepping Stones Defendants Demonstrate No Statutorily Relevant "Public Disclosure" of the Same Allegations Through a 2013 State Court Complaint or Resulting News Articles.

It is undisputed from Declarations of each of the two Relators/Plaintiffs already in the record of this case that *prior to the beginning of 2013*, both of the Relators had learned through their own exclusive investigative efforts, and had themselves reported to federal officials, the very conduct alleged in their *qui tam* Complaint as to the "Hospital

Defendants" (transactions with which are involved in this case), and that in November of 2013 a State Court lawsuit was filed - on behalf of a separate hospital, the Pearl River County Hospital - only because the Relators themselves had *earlier* (1) hired the attorneys who brought that lawsuit, (2) reported the Relators' findings about Pearl River Hospital to those attorneys, and (3) directed the attorneys to file the lawsuit on behalf of the Pearl River Hospital.[11] With no evidence to support any such nonsensical view, Stepping Stones speculates that those events happened in the opposite sequences from how all of the evidence reveals they actually happened. They claim that the Relators "merely copied the Medicare fraud allegations previously made by Pearl River County Hospital" when they filed their *qui tam* Complaint, and therefore cannot be regarded as "original sources" of the information they themselves had investigated and learned as to the Hospital Defendants (many months *prior* to when they caused the late-2013 filing of Pearl River Hospital's lawsuit), as "original source" was defined as a part of the FCA's "public disclosure bar" both before and after the FCA's "public disclosure" provision was substantially amended on March 23, 2010. 31 U.S.C. § 3730(e)(4).

First, as to all (or almost all) of the false claims alleged in this case, application of the "original source" language of the FCA's public disclosure bar has no relevance herein, since Stepping Stones points to no "public disclosure" of any kind recognized by

---

[11]See Exhibits 1 and 2 to this Memorandum, previously submitted to the Court herein in support of previous responses to other Defendants' dismissal motions.

the FCA as of that March 2010 amendment as relevant to the statutory bar.[12]

As then amended, for the bar to apply to a *qui tam* relator (subject to a later "original source" analysis), "substantially the same allegations or transactions as alleged" in the FCA complaint must have been "disclosed" through one or more of a specified list of communication media.[13] Stepping Stones points to only two sets of "disclosures," namely (1) the 2013 State Court Complaint (and its later amendment in the same State Court) and (2) two later internet "articles" very generally describing that original Complaint's allegations. At least as of March of 2010, no such state court complaint can

---

[12]This case was filed on February 8, 2016. (Docket herein, No. 3). The United States not having now intervened herein, the applicable statute of limitations is generally regarded as the six-year provision under 31 U.S.C. § 3731(b), under which FCA challenges to the making of false claims must not be brought "more than 6 years after the date on which the violation of section 3729 is committed," which in this case would bar challenges to claims made to federal insurers prior to February 8, 2010. *See, e.g., United States ex rel. Jackson v. Univ. of N. Tex.*, 673 Fed.Appx. 384, 387 (5th Cir. 2016). The relevant amendments to the "public disclosure bar" were enacted the following month, on March 23, 2010. (Stepping Stones Memorandum, at Page 15). Stepping Stones is frank to acknowledge (on Page 17 of their Memorandum) that "the Fifth Circuit has not addressed the issue (of whether or not the earlier) version of the public disclosure applies to pre-ACA conduct," which in this case would involve only claims submitted by hospitals between February 8, 2010 and March 23, 2010 - a period of only 43 days. Even if the relevant 2010 amendments did not apply "retroactively," the pre-2010 language would apply only to a maximum of 43 days of potential claims. Certainly the parties agree that as of March 23, 2010, and thus as to virtually all (if not all) claims within the six-year period covered by this case, the 2010 amended language clearly applies.

[13]To be relevant to any "public disclosure bar," the particular allegations or transactions alleged in an FCA complaint must, at least as of March of 2010, have been earlier "publicly disclosed (i) in a Federal criminal, civil, or administrative hearing in which the Government or its agent is a party; (ii) in a congressional, Government Accountability Office, or other Federal report, hearing, audit, or investigation; or (iii) from the news media." The statute includes no "catchall" category, and allows no categories of public disclosures other than those specified categories. *See, e,g., Grubbs, supra*, at 194-95 (citing the exclusive statutory "disclosure" categories as they existed before the 2010 amendments to the FCA).

possibly be included in any of the categories on the statutory list, as the list now includes only litigation-related disclosures "in a *Federal* criminal, civil, or administrative hearing *in which the Government or its agent is a party*." (FCA Subsection 3730(e)(4)(A)(i); emphasis added). While the statutory list also includes disclosures of the details of allegations "from the news media," the two late-2013 internet "news" articles only describe in the most general terms some of the allegations in the State court complaint (which, again, originated with the Relators themselves). In no respect are "substantially the same allegations or transactions as alleged" in the Relators' *qui tam* Complaint disclosed in either of those late-2013 internet "articles."[14]

III. Even If the Same Allegations had Earlier been Disclosed through a Statutorily-Recognized Public Medium, the Relators' Roles as "Original Sources" of the Information Would Preclude Application of the Public Disclosure Bar.

Even if the same allegations contained in the current *qui tam* Complaint had been

---

[14]For substantially the same "allegations" or "transactions" to be disclosed publicly as are alleged in a *qui tam* complaint, FCA cases require that the publication must have disclosed sufficient particulars about why the activity was fraudulent and why the fraudulent conduct resulted in false claims to a federal agency. No "public disclosure" bars a *qui tam* suit unless the publication has "placed in the public domain" *all* of the "critical elements exposing the transaction as fraudulent." *United States ex rel. Feingold v. AdminaStar Fed., Inc.*, 324 F.3d 492, 495 (7th Cir. 2003). The disclosure's content must "bring to the attention of the relevant authority that there has been a false claim against the government." *Id.* at 495. See also *United States ex rel. Rabushka v. Crane Co.*, 40 F.3d 1509, 1514 (8th Cir. 1994)("Embracing too broad a definition of "transaction" threatens to choke off the efforts of *qui tam* relators in their capacity as "private attorneys general."). "In order to bar jurisdiction, a public disclosure must reveal both the true state of facts and that the defendant represented the facts to be something other than what they were." *United States ex rel. Minn. Ass'n of Nurse Anesthetists v. Allina Health Sys. Corp.*, 276 F.3d 1032, 1044 (8th Cir. 2002). *See also United States ex rel. Reagan v. East Tex. Med. Ctr. Reg. Healthcare Sys.*, 384 F.3d 168, 174-75 (5th Cir. 2004).

"publicly disclosed" through one of the statute's specified means of public disclosures, the public disclosure bar would not apply here if the Relators were what the FCA calls "original sources of the information." FCA Subsection 3730(e)(4). Congress through its 2010 amendments greatly broadened the scope of who can be an "original source" by providing that status to any *qui tam* relator who *either* (1) prior to a public disclosure (through one of the specified forms of disclosure) has voluntarily disclosed to the Government the information on which allegations or transactions in a claim are based, *or* (2) has knowledge that is independent of and materially adds to the publicly disclosed allegations or transactions, and who has voluntarily provided the information to the Government before filing an action under this section" of the FCA. 31 U.S.C. § 3730(e)(4)(B)(emphasis added).[15]

The presumed-true assertions in their pending Complaint, like the two Declarations included herewith, all make clear that the two Relators in this case, even if required to demonstrate "original source" status under the FCA's 2010 amendments (as to all alleged false claims made since March 23, 2010), would qualify under *either* of those two criteria. Those Relators (a) *initiated* the Mississippi Circuit Court proceeding which

---

[15]As of March of 2010, "a relator no longer must possess 'direct . . . knowledge' of the fraud to qualify as an original source." *Majestic Blue Fisheries, supra*, at 299. As a result of the 2010 FCA amendments, "(t)he focus now is on what independent knowledge the relator has added to what was publicly disclosed." *Ibid.* The "direct and independent" language was then specifically removed by Congress from the FCA. *See, e.g., United States ex rel. Colquitt v. Abbott Labs.*, 858 F.3d 365, 374 (5th Cir. 2017), and *United States ex rel. Schumann v. AstraZeneca Pharms., L.P.*, 769 F.3d 837, 848 (3rd Cir. 2014).

Stepping Stones points to as the principal "public disclosure" (and which resulted in the only two late-2013 internet, or "news media;" disclosures Stepping Stones cites), (b) hired and briefed the attorneys who brought that action, and (c) obviously had from their own efforts the information alleged in that State proceeding before the proceeding even existed (such that their information is obviously "independent of" information disclosed only in the later Circuit Court proceeding).[16] Prior to bringing this action, moreover, they both disclosed the relevant information to multiple federal health care investigative officials during years leading up to the 2016 filing of this FCA action. *Ibid.* Relator Monsour's Declaration, included as Exhibit 3 to this Response, confirms those numerous disclosures to numerous federal officials.

As to false claims allegedly made during the 43-day period preceding the March 23, 2010 FCA amendments - as to which the pre-2010 statutory language may (or may not) apply - the result is the same: the Relators by 2012 were both "original sources" or the information contained in their *qui tam* Complaint. Prior to 2010, an "original source" was required to have "direct and independent knowledge of the information on which the

---

[16]See Paragraphs 1-3 of the Complaint. The presumed-true Paragraph 3 therein states that "beginning in 2012," the same two Relators "uncovered together the activities by the Defendants described (in their FCA Complaint), engaged auditors, attorneys, architects and other professionals, to further uncover more details of those activities, and disclosed the substance of those activities to federal health care fraud investigators . . . to receive and investigate evidence of fraud against the Medicare system. After acquiring through their investigation the information reflected herein, the Relators then caused a private lawsuit to be filed on behalf of the Pearl River County Hospital against some of the Defendants herein," a reference obviously to the same Mississippi Circuit Court proceeding on which Stepping Stones now entirely relies.

allegations are based and (to have) voluntarily provided the information to the Government before filing an action under this section which is based on the information." 31 U.S.C. § 3730(e)(4)(B)(prior to March 23, 2010). The Relators' knowledge was "direct" within that meaning because they derived it before 2013 - rather than for the first time from reading a 2013 complaint which itself resulted from their own prior investigative efforts.[17] Under pre-2010 FCA caselaw such information was "direct" if it was "gained by the relator's own efforts rather than learned second-hand through the efforts of others" reflected in relevant public information.[18] The Relator's knowledge in turn was "independent" of any public disclosures because it was physically impossible for its to have been "derived from the public disclosure" represented by the 2013 State court proceeding, since undisputed evidence proves that the Relator's 2012 knowledge obviously preceded - and, for that matter, was the driving cause of - the 2013 State lawsuit.[19] The Relators in 2012 could have learned nothing from the contents of a State court proceeding which was not even filed until late 2013.

This is not a "parasitic" suit filed by two "opportunistic late comers" capable of being properly barred as failing the "original source" test governing the periods either

---

[17]See the Declarations included as Exhibits 1 and 2 hereto.

[18]*See, e.g., U. S. ex rel. Reagan v. E. Tex. Med. Reg'l Heathcare Sys.*, 384 F.3d 168, 178-79 (5th Cir. 2004)(for the relator's knowledge to be "direct," it could not have been derived from "research and review of public records"), and *United States ex rel. United States ex rel. Fried v. West Independent School Dist.*, 517 F.3d 439, 442-43 (5th Cir. 2008).

[19]*Reagan, supra*, at 177 (to be "independent," the relator's knowledge must not have been "derived from the public disclosure" on the statutory list itself).

before or after the March 2010 FCA amendments.[20]

Conclusion

The Stepping Stones Defendants' Motion to Dismiss, and for Summary Judgment, should be denied.

This the 2nd day of April, 208.

MITCHELL D. MONSOUR, ET AL.
By their Attorney,
PIGOTT LAW FIRM, P.A.

By: s/Brad Pigott
J. Brad Pigott

J. Brad Pigott, Mississippi Bar No. 4350
PIGOTT LAW FIRM, P.A.
775 North Congress Street
Jackson, Mississippi 39202
Telephone: 601-949-9450
Email: bpigott@pjlawyers.com

Certificate of Service

This is to certify that I have this day, April 2, 2018, caused the foregoing Response and Memorandum to be electronically filed through the electronic filing system of the Clerk of this Court, and have thereby caused each counsel of record who has entered an appearance herein to receive electronically a duplicate thereof.

_s/Brad Pigott_____
J. Brad Pigott

---

[20] *Reagan, supra*, at 174 ("public disclosure bar" is designed to apply to "parasitic suits by opportunistic late-comers who add nothing to the exposure of fraud").